

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:

JAMES K. SQUIRE

FAA Order No. 98-15

Served: July 13, 1998

Docket No. CP97WP0007

ORDER GRANTING EXTENSION OF TIME

Complainant has filed a written motion, requesting an extension of time until July 28, 1998, in which to file a reply brief under 14 C.F.R. § 13.233(e)(2). Section 13.233(e)(2) provides as follows:

Written motion for extension. If the parties do not agree to an extension of time for filing a reply brief, a party desiring an extension of time may file a written motion for an extension with the FAA decisionmaker The FAA decisionmaker may grant an extension if good cause for the extension is shown in the motion.

14 C.F.R. § 13.233(e)(2). Complainant did not represent in the motion whether Respondent James Squire had been contacted or whether Squire had any objection to the request; however, because Complainant cited 14 C.F.R. § 13.233(e)(2), it is presumed that Squire has objected to the request for an extension of time. No written objections have been received as of this time to Complainant's request from Squire. Complainant's request for an extension of time until July 28, 1998, in which to file its reply brief is granted.

A hearing was held in this matter on August 20, 1997. Squire filed a document which subsequently was construed by the Administrator as a notice of appeal from the

law judge's initial decision. In the Matter of Squire, FAA Order No. 98-5 (March 19, 1998). The Administrator granted Squire additional time to file an appeal brief.¹ *Id.*

Squire filed a handwritten appeal brief on April 24, 1998, with the Hearing Docket.² The appeal brief had no certificate of service or any other indication of whether the agency attorney had been served. By letter dated June 16, 1998, Vicki S. Leemon, Manager, Adjudication Branch, forwarded a copy of the appeal brief to the agency attorney.³ In the request for extension of time, the agency attorney explained that Squire had not served the appeal brief upon Complainant.⁴

Section 13.233(e) provides that "any party may file a reply brief with the FAA decisionmaker not later than 35 days *after the appeal brief has been served on that party.*" 14 C.F.R. § 13.233(e)(emphasis added). In this case, the appeal brief was not served upon the agency attorney until June 16, 1998, when forwarded to the agency attorney by Ms. Leemon. Because the appeal brief was served by mail, the agency attorney had the benefit of the "mailing rule," which provides a party with an additional 5 days in which to file a response to a document served by mail. 14 C.F.R. § 13.211(e).

¹ In FAA Order No. 98-5, the Administrator granted Squire additional time in which to file an appeal brief until April 29, 1998.

² This document was dated April 23, 1998, and was postmarked on April 24, 1998. The document has no certificate of service. Hence, under 14 C.F.R. § 13.210(b), the filing date was the date indicated by the postmark: April 24, 1998.

³ Letter by Vicki S. Leemon, Manager, Adjudication Branch, to Brent Pope, Esq., dated June 16, 1998. In this letter, Ms. Leemon wrote as follows:

There is no indication on this appeal brief as to whether a copy was served on Complainant. In case, as it appears, Respondent failed to serve a copy of his appeal brief on Complainant, I am sending a copy to you now.

⁴ Complainant's Request for Extension of Time to File Reply Brief, dated June 30, 1998.

Hence, even without an extension of time, Complainant's appeal brief is not due until July 27, 1998.⁵

Complainant has requested an extension until July 28, 1998, in which to file the reply brief. Thus, Complainant only is requesting a one-day extension of time. Due to the timeliness of Complainant's request for such a brief extension of time, Complainant's request for an extension of time in which to file the reply brief is granted. Complainant's reply brief is due to be filed no later than July 28, 1998.

JANE F. GARVEY, ADMINISTRATOR
Federal Aviation Administration



VICKI S. LEEMON⁶
Manager, Adjudication Branch

Issued this 10th day of July, 1998.

⁵ The fortieth day after June 16, 1998, is Sunday, July 26, 1998. By action of 14 C.F.R. § 13.212(c), therefore, the reply brief is due on Monday, July 27, 1998.

⁶ Issued under authority delegated to the Chief Counsel and the Assistant Chief Counsel for Litigation by Memorandum dated October 27, 1992, under 49 U.S.C. § 322(b) and 14 C.F.R. § 13.202 (*see* 57 Fed. Reg. 58,280 (1992)) and redelegated by the Assistant Chief Counsel for Litigation to the Manager, Adjudication Branch, by Memorandum dated August 6, 1993.